

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED

MAR 23 2017

**Clerk, U.S. District Court
District of Montana
Missoula**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAYMOND BELL,

Defendant.

Cause No. CR 09-14-H-DWM

ORDER

This matter is before the Court on Defendant/Movant Bell's motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255. The motion had already been extensively briefed when a stay was entered pending the United States Supreme Court's decisions in *Welch v. United States*, No. 15-6418 (U.S. cert. granted Jan. 8, 2016), and then extended pending the Court's decision in *Beckles v. United States*, No. 15-8544 (U.S. cert. granted June 27, 2016).

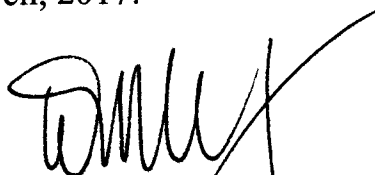
The *Beckles* stay was ordered to "remain in effect until 14 days after the Supreme Court issues its decision." Text Order (Doc. 126). *Beckles* was decided on March 6, 2017. Notwithstanding continuance of the stay for 14 days from that date, Bell moved, on March 14, 2017, to defer ruling on the § 2255 motion for 14 days while counsel seeks the client's consent to withdraw the motion. On March 20, 2017, the United States moved to dismiss the § 2255 motion.

The Federal Rules of Civil Procedure apply in § 2255 proceedings to the extent they are not inconsistent with the controlling statutes or the Rules Governing § 2255 Proceedings. Rule 12, § 2255 Rules. The statutes and rules do not speak to withdrawal of a § 2255 motion. Under Fed. R. Civ. P. 41(a)(1)(A)(i), a § 2255 movant may voluntarily dismiss his motion by filing notice “before the opposing party serves either an answer or a motion for summary judgment.” Alternatively, the movant may voluntarily dismiss his motion by filing “a stipulation of dismissal signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii).

Neither of these options is available here. The United States has not agreed to dismissal. It has filed a brief (Doc. 121) on the merits of the claim. In the context of a § 2255 proceeding, a brief on the merits is equivalent to an answer or motion for summary judgment.

Accordingly, IT IS HEREBY ORDERED that Bell’s motion to defer ruling (Doc. 130) is DENIED. Bell’s motion to lift the stay (Doc. 127) is DENIED AS MOOT. Briefing will proceed on the United States’ motion to dismiss.

DATED this 23rd day of March, 2017.



Donald W. Molloy
United States District Court